

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	
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Amendment of Section 2.106 of the)	ET Docket No. 95-18
Commission's Rules to Allocate)	RM-7927
Spectrum at 2 GHz for Use)	PP-28
by the Mobile-Satellite Service)	

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

REPLY COMMENTS OF CENTURY CELLUNET, INC.

Century Cellunet, Inc. ("Century")¹ respectfully submits its reply to comments on the Further Notice of Proposed Rulemaking in the above-captioned docket.² As detailed below, Century joins the many commenters that generally support implementation of the proposed incumbent licensee relocation scheme set forth in the *Further Notice*.

I. INTRODUCTION

In the *First Report and Order* in this proceeding, the FCC allocated 70 MHz of spectrum for mobile satellite services ("MSS"), with 1990-2025 MHz allocated for uplink and 2165-2200 MHz allocated for downlink.³ The Commission concluded that to accommodate MSS, it would be necessary to relocate the Broadcast Auxiliary Services ("BAS") and the commercial fixed services ("FS"), including microwave services, in those bands. Specifically, the Commission

¹ Century and its subsidiaries operate numerous cellular systems throughout the United States. As a critical element of these systems, Century operates a number of microwave paths in the 2 GHz band that is being reallocated for use by mobile satellite services.

² FCC 97-93 (March 14, 1997) (First Report and Order and Further Notice of Proposed Rulemaking) ("*First Report and Order*" and "*Further Notice*").

³ *First Report and Order*, ¶ 14.

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concluded that the BAS band should be reduced from 120 MHz to 105 MHz and relocated from 1990-2110 MHz to 2025-2130 MHz,⁴ and, where sharing with MSS proves infeasible, FS licensees should be relocated from the 2165-2200 MHz band to frequencies above 5 GHz.⁵

In the companion *Further Notice*, the Commission sought comment on the details of how incumbent BAS and FS licensees were to be relocated. Regarding FS licensees, the Commission proposed generally to follow the relocation policies adopted in the Emerging Technologies docket. As such, the *Further Notice* proposes a two-phased negotiation period — a voluntary negotiation period followed by a mandatory negotiation period.⁶ If no agreement is reached by the end of this two-phased period, the MSS licensee would be able to request involuntary relocation of the FS licensee. If such involuntary relocation occurs, the MSS licensee would be required to guarantee all costs of relocating the microwave licensee to a comparable facility, to complete all activities necessary for placing the new facilities into operation (including engineering and frequency coordination) and to build and test the new FS or alternative system.⁷

Century, as a FS microwave licensee, has a vital interest in ensuring that incumbents are treated fairly during the relocation process and that service to the public is not compromised by the Commission's reallocation of the FS spectrum. Century therefore urges the Commission to act consistently with the views of many of the commenters in this proceeding that urge adoption of the *Further Notice*'s proposed rules for the relocation of FS incumbents.

⁴ *Id.*, ¶ 32.

⁵ *Id.*, ¶¶ 42-43.

⁶ *Further Notice*, ¶ 74.

⁷ *Id.*

II. THE RECORD IN THIS PROCEEDING REFLECTS BROAD SUPPORT FOR THE COMMISSION'S PROPOSALS REGARDING THE RELOCATION OF FIXED SERVICES FROM THE 2110-2130 MHz AND 2165-2200 MHz BANDS

This proceeding is not the first in which the Commission has contemplated the relocation of existing licensees to make way for new technologies. In order to permit the deployment of personal communications services ("PCS"), the Commission, in its 1993 Emerging Technologies docket, adopted rules that were "intended to provide licensees of services using emerging technologies with access to 2 GHz frequencies in a reasonable timeframe," while at the same time preventing "disruption to existing 2 GHz operations," and minimizing "the economic impact on the existing licensees."⁸ In the PCS context, the FCC gathered a voluminous record⁹ and gained ample experience with promulgating relocation rules that strike an appropriate balance between the interests of incumbent licensees, new licensees, and the public.¹⁰ Century believes

⁸ *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, Third Report and Order and Memorandum Opinion and Order*, 8 FCC Rcd 6589, 6589 (1993) ("*Third Report and Order*").

⁹ *See Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8825, ¶ 10 (1996) ("*Cost Sharing First Report and Order*") ("the existing relocation procedures for microwave incumbents adopted in the *Emerging Technologies* docket were the product of extensive comment and deliberation prior to the initial licensing of PCS").

¹⁰ Indeed, as the Commission gained increasing experience with these policies, it revised and adjusted them several times. *See Cost Sharing First Report and Order*, 11 FCC Rcd 8825, ¶ 8 (implementing a number of "changes and clarifications" to the microwave relocation rules); *Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, Second Report and Order*, FCC 97-48, ¶ 1 (rel. Feb. 27, 1997) ("further amend[ing] certain aspects of [the Commission's] microwave relocation rules").

— and the record reflects — that the Commission should in this proceeding generally follow the policies it has so carefully developed over the past four years.¹¹

As an initial matter, MSS licensees should clearly be required to compensate incumbent microwave licensees that are being dispossessed of their frequencies and facilities for the benefit of the MSS providers.¹² A number of commenters agree, and equitable principals demand, that when one party is forced to suffer an economic loss in order to convey an economic benefit to another, the party suffering the loss should be made whole to the greatest extent possible. It is especially appropriate to require new licensees to compensate relocated incumbents when the FCC is contemplating — as it is in this proceeding — granting MSS licensees access to the spectrum without an auction.¹³ Under such circumstances, it can hardly be considered unduly burdensome for the beneficiaries of the spectrum reallocation to be required to compensate fairly those that are being forced to relocate.

In addition, the record reflects that the two-phased negotiation period proposed by the Commission strikes the best balance between the interests of the incumbent licensees, the new licensees, and the public.¹⁴ As stated in the Emerging Technologies *Third Report and Order*, the

¹¹ See American Petroleum Institute ("API") Comments at 4-6 (noting that the relocation rules have been successful in the PCS contest); State of California Comments at 4 (the existing relocation process "works well" and should not be changed); BellSouth Corp. ("BellSouth") Comments at 3; Burlington Northern and Santa Fe Railway Co. and Norfolk Southern Corp. Comments at 5; American Public Safety Communications Officials, International ("APCO") Comments at 3.

¹² See, e.g., ALLTEL Communications, Inc. ("ALLTEL") Comments at 1-2.

¹³ *First Report and Order*, ¶ 54 (the Commission will defer any decision on competitive bidding for MSS spectrum until after it has accepted applications for licensing).

¹⁴ See UTC, The Telecommunications Association ("UTC") Comments at 4;
(Continued...)

voluntary and mandatory negotiation periods "provide adequate time for fixed microwave licensees to prepare for relocation and encourage good faith and fair voluntary negotiations," and "provide a reasonable balance between the need to ensure orderly relocation of fixed microwave facilities . . . and the national interest in facilitating development of new technologies and services."¹⁵

The guidelines for good faith negotiations during the mandatory period that were promulgated in the *Microwave Cost-Sharing* proceeding will also serve the public interest by preventing either side from subverting the negotiations process to their own ends. These guidelines set forth a case-by-case analysis under which the Commission evaluates a number of factors, including: (1) whether the new licensee has made a *bona fide* offer to relocate the incumbent to comparable facilities; (2) if the incumbent has demanded a premium, whether the premium is directly related to relocation, and the relative value of the premium; (3) what steps the parties have taken to determine the actual cost of relocation to comparable facilities; and (4) whether either party has withheld information related to relocation costs.¹⁶

It is further appropriate for incumbents to maintain their primary status during these negotiations. Any other arrangement would have the same effect as drastically shortening the voluntary and mandatory negotiating periods. Tinkering with this delicate balancing of incumbent and new MSS interests by awarding MSS licensees primary status at this early date

(...Continued)
ALLTEL Comments at 2-3.

¹⁵ *Third Report and Order*, 8 FCC Rcd at 6595.

¹⁶ *Further Notice*, ¶ 76 (citing *Cost Sharing First Report and Order*, ¶ 21).

would give MSS licensees an unfair negotiating advantage. If this occurs, incumbent, fixed service microwave licensees may be denied the opportunity to recoup all of their relocation costs.

The Commission is also correct in proposing a one-year trial period during which a displaced incumbent can ascertain whether its new facilities are comparable to its old facilities and, if they are not, demand that the defects be repaired or that it be returned to its original or an equivalent 2 GHz frequency.¹⁷ This one-year trial period is essential because defects in new facilities are not always obvious until the system is tested under actual operating conditions for an extended period of time. Given the importance of fixed microwave systems to the nation's communications infrastructure — especially systems used for public safety purposes¹⁸ — the Commission's rules must provide relocated licensees with equivalent facilities.

Finally, many parties agree¹⁹ that the Commission should adopt a provision to ensure relocation cost-sharing among MSS licensees. Requiring subsequently entering MSS operators to compensate prior entrants for their proportionate costs of clearing the MSS band is equitable and avoids the free rider problem.²⁰ Other plans would have the effect of penalizing parties that were willing to negotiate relocation agreements within the voluntary negotiation period, and reward parties that dragged out these negotiations or entered the market after relocations had taken place. In addition, by ensuring cost-sharing, the Commission's proposal serves the public

¹⁷ *Further Notice*, ¶ 74.

¹⁸ See APCO Comments at 1 (many public safety systems include "critical microwave communication links in the 2130-2150/2180-2200 MHz band").

¹⁹ BellSouth Comments at 8-9; UTC Comments at 5-6.

²⁰ *Further Notice*, ¶ 80.

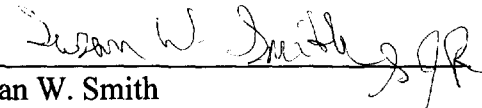
interest by facilitating the coordinated relocation of an incumbent's entire system, rather than allowing only piece-meal relocations of particular paths that may be disruptive to the incumbent's provision of service.

III. CONCLUSION

As detailed above, the relocation proposals contained in the *Further Notice* are not only based upon sound policies with which the Commission has ample experience, but are clearly appropriate to the instant situation. Accordingly, Century joins the many commenters that urge the Commission to adopt the *Further Notice's* proposed relocation rules for the MSS board.

Respectfully submitted,

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July 21, 1997